

Effective Date: 05/10

Town of Concord

APP # 56

Staff Provision of Records and Information

Introduction

This policy supplements, and in no way contradicts or discourages employee adherence to APP #25 addressing the Massachusetts Public Records Law, or APP #14 addressing the use of Town Counsel.

It is not uncommon for employees in various departments to receive a subpoena for records, a notice of deposition or a less formal request for information from outside lawyers or their staff concerning what appears to be a private legal dispute. While the great majority of such requests are straight-forward and do not involve the Town of Concord or Town employees, on occasion they may represent attempts to gain information that result in adding the Town of Concord as a defendant in litigation. It is therefore imperative that whenever there is any indication that such requests for information MAY involve litigation, whether or not it is clear that the Town is to be a party to the litigation, that there be a cooperative yet coordinated response.

As illustrative examples, the Town has received the following requests for information in the past which, on their face may appear routine, but where the content of staff response(s) may avoidably or not draw the Town into litigation:

- Deposition of Building Commissioner in litigation where a permit was issued for construction and abutter has appealed the issuance of that permit.
- Subpoena for Board of Health Records relating to septic system design.
- Deposition of Police Officers regarding an accident that resulted in personal injury.”

Policy

In any matter in which an employee or department receives a subpoena or other request for public records or documents **which includes a notice of deposition or a request for a formal or informal interview related to any litigation or to otherwise recount an employee’s or department’s actions related to any matter**, such request shall immediately be reported in writing, together with a copy of the subpoena, notice or written request (if any), by way of the

department head to the Town Manager's Office. In such cases the requesting party shall be informed by the employee or department in receipt that a Town representative will respond to their request in a timely manner, but the request shall not be fulfilled without authorization from the Town Manager or a duly authorized designee. (This policy shall not apply to purely personal or private matters unrelated to the recipient's employment or Town business. Further, this policy is not intended to contradict employee's individual rights or obligations under the law, where it may not be appropriate to follow the communications protocols outlined in this policy. However, any expected variations from these protocols should be communicated to the Town Manager's Office. This policy shall not apply to requests for information or cooperation, whether formal or informal, made by any federal, state or local government agency, department, office, commission or representative, to any employee who reasonably believes that he or she is entitled to confidentiality and/or anonymity. This policy is not intended to interfere with or contradict any rights or privileges that any employee has or may have under federal, state or local laws, or under any contract of employment with the Town. To the extent this policy is inconsistent with such laws or contracts, it shall not apply.)

Procedure

While the goal is always to respond to the request in as cooperative and expeditious a manner as possible, in considering such a request the department head and Town Manager (or designee) shall first review all relevant information and determine whether to seek the advice of counsel where prior legal guidance may be appropriate. When there is any potential that the Town may subsequently be named as a defendant in a matter, the department head and department employees may also be called upon to assist in the reporting of the matter to the Town's insurer by way of a Town of Concord Notice of Occurrence Form. In any event the Town Manager or an authorized designee shall make the final determination as to how and when to respond to such requests.

This policy shall apply to all employees of the Town of Concord. Employees should not hesitate to contact the Town Manager's Office for guidance whenever there is any question as to whether a request for information may lead to future litigation involving the Town of Concord.

Distribution: All Department Heads
All Town Employees